

EXHIBIT A

FILED UNDER SEAL

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

THE STATE OF TEXAS,)
ET AL.,)
)
Plaintiffs,) CIVIL ACTION NO.:
)
VS.) 4:20-CV-957-SDJ
)
GOOGLE LLC,)
)
Defendant.)

HEARING BEFORE SPECIAL MASTER

APRIL 18, 2024

A HEARING BEFORE THE SPECIAL MASTER was taken in the above-styled and numbered cause on April 18, 2024, from 11:04 a.m. to 5:17 p.m., before Kimberly Byrns Buchanan, CSR, RPR in and for the State of Texas, reported by machine shorthand, at the United States Courthouse, 7940 Preston Road, Plano, Texas 75024, pursuant to the Federal Rules of Civil Procedure and the provisions stated on the record or attached hereto.

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1 will be a limited deposition. But we need her for this
2 case. They haven't stipulated that her testimony is
3 admissible in this case, you know.

4 And we understand Judge Jordan's directive
5 that you need evidence in this case, not rely on
6 evidence in other cases. That's kind of what we're
7 doing. We're getting the evidence for our case.

8 SPECIAL MASTER: Appreciate that.

9 Anything else, Mr. -- go ahead.

10 MS. YOUNG: Sorry. One --

11 SPECIAL MASTER: Don't mean to cut you
12 off.

13 MS. YOUNG: -- (inaudible) correct.

14 Just to give some context, he talked
15 about -- or Mr. McCallum talked about that the very few
16 clawback challenges that have been made in this case. I
17 just want to put that in context.

18 We are only allowed to challenge
19 clawed-back documents that we have previously viewed.
20 We can't -- we're not in a position to challenge all the
21 clawed-back documents. So that universe of
22 challengeable documents is actually really, really small
23 under the protective order.

24 And that -- and so that's not to say that
25 we don't have grounds to challenge any or that all

1 documents have, you know, properly been withheld. It's
2 just a function of the clawback provision in the
3 protective order.

4 SPECIAL MASTER: Thank you.

5 Anything further, Mr. McCallum?

6 MR. MCCALLUM: Just on the point of the
7 suggestion that there was a practice of shielding
8 documents. There's been no explanation of why a
9 practice, if it existed, would have been detected by
10 outside counsel's review of privilege calls. And that
11 is the -- that's the reason why we have outside counsel
12 conducting independent reviews.

13 And that's the only point that I'll make.

14 SPECIAL MASTER: Thank you.

15 We've got about twenty minutes before we
16 need to get back before Judge Jordan.

17 Do we want to take up, Mr. Yetter, your
18 protective order with regard to Mr. Brin, Pichai --

19 MR. YETTER: Yes.

20 SPECIAL MASTER: -- and Neal Mohan?

21 MR. YETTER: Yes.

22 So you've read all the papers. And I
23 don't think there's any disagreement -- like material
24 disagreement of what the standard is.

25 Plaintiff has to show relevance, and it's

not enough to show remote relevance. And basically it's
the Computer Acceleration case --

SPECIAL MASTER: Right.

4 MR. YETTER: -- of the Eastern District.

5 And, if they show relevance, then
6 the -- of the -- the defendant here -- of the -- the
7 deposition has to show that there is other means,
8 less-intrusive means, like lower-level employees and/or
9 that the -- this higher-level executive does not have
10 unique personal knowledge.

11 So there's three witnesses here. Two of
12 those fall within that construct, Sergey Brin and Sundar
13 Pichai. With your permission, I'd like to just briefly
14 talk about each one.

15 SPECIAL MASTER: Please.

16 MR. YETTER: And it seems to me that the
17 most relevant way to deal with them is to look -- we
18 asked. They brought this up. They noticed these three,
19 and including Mr. Mohan. We pushed back or we inquired
20 why would you want to take them. Two of them -- all of
21 them are still at the company. All of them are at very
22 high levels.

23 They all fall -- it may not be called apex
24 doctrine in federal court, but it's clearly a doctrine
25 for high-level executives in the Eastern District in

1 federal -- in the Fifth Circuit generally.

2 They gave us documents -- some -- they
3 added some documents to what we've presented -- to what
4 both sides have presented to the Special Master.

5 Let me just take them one at a time.

6 So Sergey Brin, co-founder, still active
7 at Google. The two documents -- the area that they
8 focused on for Mr. Brin was basically the acquisition of
9 DoubleClick.

10 And you've seen the documents, but I just
11 want to make a couple of comments on two of the
12 documents.

13 We attach them to our -- let me see if I
14 can give you the document number.

15 SPECIAL MASTER: I think it's 349.

16 MR. YETTER: Yeah, our motion. 349.

17 And it is exhibit -- sealed Exhibits A and
18 B. And these are document, as I understand it, that
19 they -- that the States called out to us to show that
20 these two -- that this -- Mr. Brin had unique personal
21 knowledge and no one else in the company, or that was at
22 that time there, could testify about the same thing.

23 So Exhibit A is a series of e-mails and
24 it's a seven-page -- a nine-page e-mail. And Mr. Brin
25 basically comments, as you've seen it, just a couple of

1 times --

2 SPECIAL MASTER: Right.

3 MR. YETTER: -- usually in just a few
4 words. Like at one point, he says -- they're debating,
5 and there's a number of people involved, all higher-up
6 folks. And they're debating: What's the size of the
7 offer? [REDACTED]?

8 And he says: [REDACTED]. He
9 says: [REDACTED]. He says: [REDACTED]
10 [REDACTED]
11 [REDACTED].

12 And this is really a discussion among a
13 number of executives at Google. Some of them may not be
14 there anymore.

15 But there's -- the one thing this e-mail
16 at least respectfully will offer shows that it's not
17 unique to Mr. Brin. I mean, he may have had an opinion.
18 But, just because a high-level executive has an opinion
19 that he expresses among a group of other executives in
20 coming to a decision, it doesn't mean that his knowledge
21 about that decision is unique.

22 That's essentially the argument that the
23 Plaintiffs are making, that if he makes a personal
24 opinion or meets something personally, then that means
25 it's unique personal knowledge. And that's not what the

1 cases say.

2 I will point out, for example, in
3 the -- one of the cases that we have cited is the
4 Microsoft case, the Computer Acceleration case. And in
5 that Eastern District case, 2007, the Plaintiffs wanted
6 to depose Bill Gates. And they said, well, he -- we
7 have some e-mails where he personally expressed concern
8 about importance of boot speed and something.

9 And the magistrate judge there basically
10 said, well, that's not enough. It's not enough to claim
11 that a higher-level executive has remotely relevant
12 information, nor is it enough to show that he's the only
13 one that has it, that he's unique.

14 So, here, in -- Sergey Brin may have
15 expressed in Exhibit A and 17 years ago in March of
16 2007.

17 And, in Exhibit B, he got a slide deck,
18 like lots of other people did, that covered the same
19 acquisition, again, 17 years ago in 2007, that somehow
20 that creates -- makes him a relevant --
21 materially-relevant witness.

22 The State says that the fact that he got
23 the slide deck, it was a custodian, in other words, and
24 saved somehow on his --

25 SPECIAL MASTER: Right.

MR. YETTER: -- electronic information, makes it relevant to him. And, again, it's nothing more than Bill Gates.

Another case that we have cited to the Special Master is the Motion Games/Nintendo case where they wanted to depose the CEO -- or I believe the president of Nintendo. And he made public statements. He didn't make just internal e-mails, like Bill Gates did. He made public statements. The Plaintiff is saying that makes -- that means he's got important personal -- unique personal involvement here.

And, essentially, what the Plaintiffs, the States, have given us here is Mr. Brin, at a high level, back in 2007, was involved in high-level discussions, like lots of executives. And it doesn't reflect anything more than simply being involved in a lot of discussions about the acquisition of DoubleClick.

This case, according to the Plaintiff, is not about the acquisition of DoubleClick. It's not alleged that that itself was an epic competitive act, but that what was done with DoubleClick is of substance.

So we've made that argument. You've seen that.

SPECIAL MASTER: Yes.

MR. YETTER: So that's Mr. Brin.

SPECIAL MASTER: But would he not have some relevant information about, once we acquired DoubleClick, this might be the strategy, this might be the approach that we would like to implement on DoubleClick once it comes within the now Alphabet umbrella then? I don't think Alphabet was around.

I would anticipate something from your friends across the aisle about that.

MR. YETTER: I'm sure they're going to say that.

Like any executive at his level at the time --

SPECIAL MASTER: Right.

MR. YETTER: -- he's going to be apprised of a whole lot of stuff, like do we buy it, how much do we pay for it, what do we do with it.

The argument today to the Special Master is really not that third thing, what do we do with it, very much.

But, even if it were --

SPECIAL MASTER: Right.

MR. YETTER: -- even if they pulled up a bunch of exhibits and e-mails and slide decks that he got, that he was a custodian of, that shows he knows what they were going to do with it, again, what they

1 haven't done and what we think we have shown is that
2 he's not the person making that decision. He doesn't
3 have unique personal knowledge about it.

4 And whatever the decision that was being
5 made, which is not in the documents they provided to the
6 Special Master at this point, there are other either
7 current or former higher-level executives, employees, of
8 Google that could testify about the same thing.

9 We wouldn't be in this discussion today if
10 Mr. Brin were retired and -- or he were at some other
11 company because the whole point of this document is that
12 when you have higher-level employees of your
13 adversary -- and Mr. Brin is the co-founder, he's now
14 still very much at the top -- Sundar Pichai is the top
15 man -- then the Court looks at whether -- it's
16 essentially a proportionality standard.

17 It's whether it is burdensome, needless,
18 and disproportional to be asking that high-level
19 employee of your adversary things that others
20 within -- other witnesses with their current Google
21 employees or former Google employees -- the States have
22 been deposing and -- or, at least at this point,
23 subpoenaing former high-level Google employees, like [REDACTED]
24 [REDACTED] -- that -- and that that executive doesn't
25 have unique personal knowledge, then it's the

1 proponent's obligation to take those less-intrusive
2 steps.

3 I will say, another good example of how
4 this process works is the Isaacks case of 2023, Eastern
5 District case. This is the Little League baseball case.
6 And it was a terrible case involving sex abuse by a
7 Little League coach.

8 But what the Plaintiffs did there is they
9 wanted to depose the CEO. The way they went about doing
10 it, without the policy of the League, is they asked the
11 safety manager who made the decision not to mandate
12 child-safety testing. She said: It wasn't me. Someone
13 up the chain.

14 So then they asked her supervisor. Then
15 they asked the Chief Operating Officer. And he said:
16 It wasn't me. It was my boss, the CEO.

17 And the magistrate judge in that situation
18 said that's exactly the situation where the CEO makes an
19 important decision where no one else can testify about
20 it because it was his decision.

21 SPECIAL MASTER: So let me ask you,
22 Mr. Yetter. If Mr. Brin is not deposed, who's the
23 substitute for Mr. Brin at a lower level, what I hear
24 you saying? Who is that witness?

25 MR. YETTER: Let's talk about which topic

they want to talk about.

SPECIAL MASTER: Right.

MR. YETTER: The acquisition of
DoubleClick --

SPECIAL MASTER: Yes.

MR. YETTER: -- Neal Mohan was at DoubleClick.

I really think what they want to talk to about, according to their complaint, is what was done with DoubleClick after it was acquired. And Neal Mohan ran DoubleClick.

And I'm not trying to finger anybody.

I 'm --

SPECIAL MASTER: No, no. You're answering my question.

MR. YETTER: But he basically was in charge of DoubleClick after he came to Google until 2015. That's why they want to depose him again, at least reportedly.

Now, that same topic is also on a
30(b)(6). their long list of --

SPECIAL MASTER: It's number 66.

MR. YETTER: So they want us to give the most knowledgeable person.

So if the -- and our position, in response

1 to it shouldn't be Mr. Brin, it shouldn't be Pichai,
2 because there are other people, our 30(b)(6)
3 representative will be one of them.

4 SPECIAL MASTER: Who -- I'm going to ask
5 you this: Who is that witness for Topic 66? Has that
6 been decided?

7 MR. YETTER: I -- that is a good question.
8 I don't know off the top of my head, but I can provide
9 that information to you.

10 SPECIAL MASTER: Okay. Just asking.

11 MR. YETTER: And, frankly, it may well be
12 Mr. Mohan. If he's not --

13 SPECIAL MASTER: And, while we're at it,
14 Topic 97 on Meta will probably also be helpful too,
15 right? I mean, that's the argument --

16 MR. YETTER: Correct.

17 SPECIAL MASTER: -- that you make.

18 MR. YETTER: And we will --

19 SPECIAL MASTER: So I'm just asking who
20 those witnesses will be because it might be relevant
21 where we land on this.

22 MR. YETTER: And we will give you the -- I
23 don't know off the top of my head.

24 SPECIAL MASTER: Okay.

25 MR. YETTER: But we are obligated and we

1 agreed that we're going to provide -- I know there's
2 been some discussion about it, but we will be providing
3 a witness on those.

4 SPECIAL MASTER: On those two topics?

5 MR. YETTER: Yeah.

6 If that -- if -- it's not, though, like
7 that's the only person or witnesses -- the person we do
8 on the 30(b)(6). Because in any one of the documents
9 that you've seen -- we've just been talking about
10 Mr. Brin, but Mr. Pichai is exactly the same.

11 It's a group of people on every single
12 document that they've provided that, whether they're
13 current or former, are potential witnesses about the
14 very same exhibit.

15 SPECIAL MASTER: The CEO, has he
16 been -- he hasn't been deposed in the MDL, has he?

17 MR. YETTER: Neither of these witnesses,
18 Mr. Brin or Mr. Pichai, were deposed either in the MDL
19 or in the DOJ case.

20 SPECIAL MASTER: Thank you. That was my
21 understanding. All right.

22 Go ahead. I don't want to cut you off.

23 MR. YETTER: On -- moving to Mr. Pichai,
24 there -- they -- there's really three things, three big
25 topics --

SPECIAL MASTER: Tell you what.

MR. YETTER: Yes.

SPECIAL MASTER: This might be a good stopping point --

MR. YETTER: Okay.

SPECIAL MASTER: -- unfortunately.

I think we need to get back to -- we've got eight minutes. And we can go a few more minutes if we want to. But we need to get into the courtroom.

MR. YETTER: I'm good to stop.

SPECIAL MASTER: Let's take a -- let's stop here.

And let's go off the record.

THE REPORTER: Off the record.

(Break was from 1:23 p.m. to 4:38 p.m.)

SPECIAL MASTER: So let's go back on the record.

We're back here at about 4:39, same long afternoon that we've had. And we've had excellent argument between both sides on motions to dismiss in Judge Jordan's court.

We're now back to finish the remaining discovery disputes that are set forth in Docket 380.

And, when we broke to argue those two motions, Mr. Yetter had the floor with respect to

1 Google's motion for protective order with respect to
2 three executives of Google or Google affiliates, YouTube
3 is what I understand for Mr. Mohan.

4 So, Mr. Yetter, we talked about Mr. Brin's
5 deposition. Anything more you want to say on Mr. Brin
6 before we move to Mr. Pichai, the CEO?

7 MR. YETTER: One thing, Special Master,
8 you asked about -- I had made the point about there are
9 other less-intrusive witnesses from which to get the
10 same means, to get the same information. You asked
11 about the 30(b)(6) Topic 66, which is DoubleClick.

12 SPECIAL MASTER: Right, the acquisition.

13 MR. YETTER: It will be in two pieces.
14 It's actually more than the acquisition. It's actually
15 integration and operation as well.

16 The acquisition, which we don't really
17 think is an issue, but we will have a witness testify
18 about that. And it would be Mr. Mohan, Neal Mohan's
19 testimony about that, if he is going to testify.

20 SPECIAL MASTER: If it goes beyond
21 14 hours, yes.

22 MR. YETTER: And, on the integration and
23 operation, it is Mr. [REDACTED], who is starting
24 tomorrow.

25 SPECIAL MASTER: Okay.

MR. YETTER: His -- and he is -- I'm now informed he's already been designated for that. He is one of the 32.

SPECIAL MASTER: He's on Number 66 for
that issue.

MR. YETTER: He's on 66.

And he's also on Number 97, which is basically the Network Bidding Agreement. It's about Meta and header bidding. And he has been designated for that topic already as well. So, if that's not covered tomorrow, it will be covered in a few extra hours next week.

And so both of those topics, to the extent that they're relevant in the case, have a witness. He is a senior engineer, a senior employee of Google that is prepared to testify about that, which, again, we believe reflects both that there is a -- are available less-intrusive means and that this knowledge about both of those topics, DoubleClick integration and operation and acquisition and Facebook Meta and the NBA, are not unique personal knowledge of Mr. Brin.

SPECIAL MASTER: Okay. Obviously, for 30(b)(6), it doesn't depend upon personal knowledge, but it can be helpful.

Mr. ██████████ was at Google at the time of

1 the DoubleClick acquisition?

2 MR. YETTER: He was. He was, yes. I
3 believe he was. He's been -- no, actually, I'm not sure
4 about that. I thought I had heard he had been --

5 (Sotto voce discussion between Mr. Yetter
6 and Ms. Bracewell.)

7 MR. YETTER: Mr. Mohan has been, but I
8 think Mr. [REDACTED] -- [REDACTED] came a few years later, but
9 he has been -- he will be prepared to testify about the
10 integration. I believe he's been there for 12 years?

11 MR. MCCALLUM: Sounds right.

12 SPECIAL MASTER: Thank you. All right.

13 MR. YETTER: Mr. Pichai is -- if Mr. Brin
14 is at a very high level, Mr. Pichai is at the pinnacle
15 of the company. He's the CEO of Alphabet.

16 He is -- the focus that they -- that the
17 States have put on him is, again, for DoubleClick, less
18 on the acquisition, but to some extent on the
19 acquisition. Not very much on the operations, at least
20 not in the documents that they have suggested.

21 The Network Bidding Agreement, they say
22 that he was involved to some extent in that.

23 He updated the board on the
24 DoubleClick -- at least he was involved in some board
25 presentations on the DoubleClick acquisition.

1 He had some involvement in a response to a
2 Forbes article on click fraud, is what the Plaintiffs
3 have said. And he had some involvement on competitive
4 efforts by Microsoft with regard to some innovations
5 that --

6 SPECIAL MASTER: He had a friend at
7 Microsoft, I believe.

8 MR. YETTER: He had a contact at
9 Microsoft.

10 SPECIAL MASTER: We're all friends.

11 MR. YETTER: We're all -- yes, we're all
12 friends or colleagues.

13 And it was some new innovation at
14 Microsoft.

15 Now, what I would say about that is,
16 especially when you look at the documents that they
17 provided on this -- and I'll only give a couple of
18 examples -- well, first of all, Plaintiffs' Exhibit 4 to
19 their response to the motion for protection, on the
20 DoubleClick acquisition, he sends an e-mail that -- to
21 three colleagues, Mr. [REDACTED], Ms. [REDACTED], and
22 Mr. [REDACTED], on the announcement of acquiring
23 DoubleClick in April 2007. He basically says:
24 [REDACTED]

25 How that is particularly relevant, if

DoubleClick is relevant -- I'm not saying it's not relevant -- but that is the most remotely relevant indication of his knowledge, that he congratulates his colleagues.

SPECIAL MASTER: No, go ahead.

6 MR. YETTER: On the issue of the Forbes
7 article on click fraud, the article is -- which is
8 Exhibit 11 to the response, the article is in July of
9 2007. And he's asked by a colleague to work on some
10 bullet points to respond to the article with another
11 colleague, [REDACTED]. And they eventually do in order
12 to update another colleague, a senior-level fellow by
13 the name of [REDACTED], on this article.

14 And, one, it's not clear -- at least the
15 States have not made it clear how the DoubleClick -- how
16 this article on the click fraud is woven into this case
17 about disclosures in antitrust violations.

18 But the bottom line is he's clearly
19 working with other people. His answer is: [REDACTED]

21 And an instant message with
22 said: [REDACTED].

23 So he's working with another colleague.
24 Any one of these would have the same knowledge about the
25 talking points that they put together about this article

1 in Forbes.

2 And the last one I will mention is --

3 SPECIAL MASTER: The NBA?

4 MR. YETTER: Yes. And it is --

5 (Reporter clarification.)

6 MR. YETTER: It is Exhibit H held under
7 seal to our motion for protection.

8 And this is another one of the documents
9 that the States have pointed out to us. It is a
10 September 2018 e-mail in which one of -- a Mr. [REDACTED] at
11 Google sends an update on the Network Bidding -- the
12 NBA.

13 And, in the second paragraph, he says:

14 [REDACTED]. [REDACTED]
15 [REDACTED].

16 At this point, Mr. Pichai is the CEO.

17 And the e-mail, which is obviously, on the
18 face of it, an update to him about the status of the
19 deal, has 49 other recipients on it, any number of which
20 are -- we would argue, are more informed probably than
21 Mr. Pichai, which is getting updated as the deal is
22 coming to conclusion, who is not having to give his
23 approval.

24 And, to the extent that there is
25 information that the Plaintiffs want to get about the

1 DoubleClick -- excuse me -- about the NBA, which is not
2 already going to be testified about in the 30(b)(6),
3 they have countless other -- at least 49 other Google
4 employees who may be still at the company or are
5 formerly at the company to ask about it.

6 The only thing that the States cite in
7 contrast is a document that is a promotion application
8 by another employee of the company who describes somehow
9 that final approval was going to come from Mr. Pichai.
10 And Mr. Pichai had nothing to do with that promotion
11 application.

12 So the bottom line -- and this is really
13 from our perspective. You said we're in the ninth
14 inning. There's, you know, two strikes left. The
15 fourth quarter or two minutes left.

16 You know, these are two of the very most
17 senior executives of the company. None of the other
18 Plaintiffs in their related cases have asked to depose
19 them.

20 They -- their knowledge, as the States
21 have provided it to us, are remotely relevant, if it's
22 relevant. And there are more than enough, as we have
23 provided in the papers given to the Special Master,
24 significant evidence that there are less-intrusive means
25 and that the knowledge is not unique to either of these

1 two men.

2 I'll stop there.

3 SPECIAL MASTER: Let me ask a question
4 about Mr. Pichai. He testified -- not -- this is
5 information. There's -- not dispositive. It's
6 just -- he testified in Search, as I understand. Is
7 that right?

8 MR. YETTER: He did.

9 SPECIAL MASTER: Okay. And he testified
10 in Epic Games?

11 MR. YETTER: He did in Epic -- he was a
12 Google witness in Search and a Epic -- adverse witness
13 in the Epic case.

14 SPECIAL MASTER: Okay. But not in -- we
15 talked about. He's -- he didn't -- he hasn't testified
16 in the three cases involving display ads.

17 MR. YETTER: He's not going to be a
18 witness in the Virginia case, and he has not been
19 noticed or deposed in the NBA.

20 SPECIAL MASTER: Okay. Thank you.

21 Want to cover --

22 MR. YETTER: Mr. Mohan?

23 SPECIAL MASTER: -- Mr. Mohan?

24 MR. YETTER: A different -- while he is
25 CEO of YouTube, we're not moving under that doc -- the

1 so-called apex doctrine.

2 But he has been deposed 14 hours already.

3 You know --

4 SPECIAL MASTER: So let me ask a question
5 on that. Are you willing to say that the deposition he
6 gave to the DOJ can be treated as if it were taken in
7 this case? Just asking.

8 (Sotto voce discussion between Mr. Yetter,
9 Ms. Bracewell, Mr. And McCallum.)

10 SPECIAL MASTER: And let me ask another
11 question.

12 MR. YETTER: We will get back to you on
13 that.

14 SPECIAL MASTER: That's fine. You may not
15 want to make that call right here and now. I get that.
16 But it might be relevant to --

17 MR. YETTER: Yes, we understand that.

18 SPECIAL MASTER: Do the States have a copy
19 of his deposition in the DOJ case, Mr. Mohan's?

20 MR. DEROSE: We do.

21 SPECIAL MASTER: Okay.

22 MR. DEROSE: And we think that there was a
23 lot that was not --

24 SPECIAL MASTER: Covered.

25 MR. DEROSE: -- covered.

SPECIAL MASTER: I suspect from your standpoint.

But you do have a copy of it?

MR. DEROSE: We do have a copy, yes.

SPECIAL MASTER: And you took it in the first seven hours, so you have -- so -- you have 14 hours of his testimony.

MR. DEROSE: Mohan's deposition was only taken by the Department of Justice. It was not cross-noticed by anyone in the MDL.

SPECIAL MASTER: Right.

MR. DEROSE: So it's just seven hours of testimony.

SPECIAL MASTER: I'm sorry. What I was referring to is you took him before you filed this lawsuit. You took him in the investigation stage?

MR. DEROSE: Oh, in the investigation.

Yes.

SPECIAL MASTER: Do you have that?

MR. DEROSE: Right. Yes.

SPECIAL MASTER: -- I assume. Right?

MR. DEROSE: Sorry.

SPECIAL MASTER: So you've got 14 hours of him, correct?

1 MR. DEROSE: That's my understanding, yes.

2 SPECIAL MASTER: Okay. Yeah.

3 MR. YETTER: I believe he was the only
4 witness that was deposed in the investigation. I -- let
5 me double-check on that, but that's my memory.

6 Am I correct?

7 UNIDENTIFIED MAN: I'm not sure.

8 SPECIAL MASTER: Okay.

9 Anything else on Mr. Mohan?

10 MR. YETTER: The only thing on
11 Mr. Mohan -- and, as I said, there -- to some extent, we
12 may designate him on some issues, so there may be a
13 limited amount of extra testimony -- is that the
14 coordination order, while it's clearly not in effect
15 today, at the time he was deposed in Virginia, it was in
16 effect. And the State of Texas was still -- had not yet
17 been remanded back to the Eastern District.

18 And, at that time, both the MDL and the
19 Plaintiff and the State of Texas, under that existing
20 coordination, would be -- would have -- that would have
21 been counted against them. They didn't
22 count -- cross-notice it.

23 And today, as counsel had said earlier,
24 the DOJ is seeking to amend the coordination order in
25 Virginia such that the very same obligation would

1 extend.

2 If that happens -- and Texas is not
3 objecting to it, they're in agreement with it -- it
4 still would be their -- it would count as a deposition
5 in this case.

6 So when it was taken, at least when it was
7 noticed, it counted as a deposition in this case. And,
8 if what happens in Virginia -- if the amended
9 coordination order actually happens, it will count as a
10 deposition in this case. And the -- you may have read
11 the motion to amend the coordination order. The DOJ
12 says that, that it would mean that the witnesses taken
13 in Virginia or in the MDL could not be retaken in --

14 SPECIAL MASTER: Right.

15 MR. YETTER: -- without good cause.

16 SPECIAL MASTER: But it -- you filed the
17 opposition, though, to that yesterday evening. Right?

18 MR. YETTER: We did, for different
19 reasons. We --

20 SPECIAL MASTER: Right, right.

21 MR. YETTER: -- file it for different
22 reasons.

23 All I'm saying is that the States here
24 before the Special Master are saying, We've never taken
25 that deposition. Yet back, originally, when it was

1 taken in Virginia, and even today, the States have
2 agreed that it would have been counted as a --
3 SPECIAL MASTER: If they remained
4 in -- their argument now is it's not a coordinated case,
5 right?

6 MR. YETTER: It's certainly their argument
7 now.

8 But, if what happens in Virginia with the
9 motion to amend, if it happens, it would be --

12 All right. Anything else from Google on
13 these three potential witnesses, deponents?

14 MR. YETTER: No.

15 SPECIAL MASTER: Okay.

16 Mr. Keller.

17 MR. KELLER: Hi, Special Master.

18 I think I'll start with Mr. Brin and
19 reserve the right to phone a friend here if they want to
20 rein me in.

I know you've read the papers. I know you understand their relevance first. And then, once we've got that, the presumption is we get things unless they can overcome the burden of showing there's a less-intrusive means.

1 I think you just heard any number of
2 40 people on a e-mail or 20 people on an e-mail. I
3 don't think that meets their burden of showing the
4 less-intrusive means. You can't just point to a laundry
5 list. But let's put a pin in that.

6 The main overarching point I would make
7 for Mr. Brin -- and I think it applies to the CEO as
8 well -- is intent really matters in these kinds of
9 antitrust cases. It's actually an element of an
10 effective monopolization claim, so it's really
11 important.

12 But it's definitely probative and relevant
13 to monopolization itself, even if it's not dispositive
14 because, if you have the intent to go out and monopolize
15 and get ill-gotten profits, as opposed to competing
16 based on your superior skill and technological prowess,
17 that's something that could be taken into account
18 because we presume that sophisticated entities like
19 Google are pretty good at carrying out their intent.

20 Another feature that I think comes from
21 these sorts of cases is precisely because the antitrust
22 laws exist people don't document their intent in careful
23 memos that lay out their anti-competitive designs.

24 And so the DoubleClick acquisition, why
25 did Mr. Brin, as a co-founder and a high-ranking officer

1 of the company, [REDACTED]
2 [REDACTED] ? And they say we haven't alleged that the
3 acquisition itself was anti-competitive. We don't
4 concede that it wasn't, that's true. But, obviously,
5 the acquisition of DoubleClick played a significant role
6 in all of the other monopolization and attempt theories
7 that we're pursuing.

8 And, you know, one reason that Mr. Brin
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED].
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED].

17 And, by its nature, these sorts of
18 intentions are going to be limited to the very top of an
19 organization like Google. They're not sending around a
20 memo to everybody copied on that e-mail saying here's
21 all the anti-competitive stuff we're going to do with
22 the DoubleClick asset.

23 So we've got to be able to depose someone
24 like Mr. Brin, [REDACTED]
25 [REDACTED]

1 [REDACTED].
2
3 And so, you know, we point to some
4 documents that demonstrate the relevance. We're not
5 going to give our entire deposition playbook and show
6 them everything in advance. We don't think that that's
our burden at this phase.

7 But the thematic point is that intent
8 matters. And I think I would say the same sort of thing
9 with respect to the CEO.

10 You know, he's going to know things that
11 he's not sharing outside of a very tight circle within
12 Google if our theories of this case are right.

13 And the other point I would make that
14 maybe doesn't come through as sharply in the papers -- I
15 know you know this -- a big part of this is
16 proportionality and burden.

17 I cast no aspersions on anybody's case.
18 Everybody thinks their case is the most important case
19 in the world. This is not a \$75,000-and-one-penny
20 diversity case. Right? This is a case by 17 sovereign
21 states. And we're seeking to break up Google. That's a
22 pretty big deal.

23 The stakes are high. The CEO can sit for
24 a deposition. Sergey Brin, he's an important person, no
25 doubt about it. But he can sit for a deposition.

1 The allegations that we're making are real
2 serious, so it means that high-level people have to get
3 in a chair.

4 SPECIAL MASTER: Anything on Mr. Mohan
5 further?

6 MR. KELLER: No. Pass the baton on him.

7 MR. DEROSE: Do you want to talk
8 about -- do you want to give more on Brin and Pichai
9 or --

10 MS. YOUNG: Yeah. Just a few more things.

11 SPECIAL MASTER: Sure.

12 MS. YOUNG: And these are -- agreed the
13 thematic points, I think, are quite concerning, but
14 there may be smaller points.

15 Just -- so most of the people -- I think
16 we dropped it in the footnotes -- that were on the
17 documents --

18 SPECIAL MASTER: They're gone.

19 MS. YOUNG: -- Pichai -- they're gone.

20 SPECIAL MASTER: I got it.

21 MS. YOUNG: So I think that has two
22 implications. Right? They're not there. But it also,
23 I think, shows that the 30(b)(6) is not a substitute.

24 And Mr. Mohan, where they're challenging
25 on other grounds, if they put him up, he's not on any of

1 those documents. I don't think he was quite -- even
2 close to the level of Mr. Brin and then Mr. Pichai at
3 the time. So I think that poses two problems.

4 A smaller issue is the Topic 97, I think
5 Mr. [REDACTED] is only covering a portion of it, so that
6 leaves another portion open on the NBA.

7 With respect to Mr. Pichai, I think, as
8 you noted, he took the stand in the Search and Epic
9 cases. He might take the stand in the DOJ case. We
10 don't know. It's still to be seen whether or not he's
11 going to be a witness in that case.

12 I think that's it from me.

13 SPECIAL MASTER: Yeah. We're just talking
14 about depositions today, right?

15 MS. YOUNG: Yeah. Right.

16 SPECIAL MASTER: We're not talking about
17 trial witnesses? Okay.

18 MS. YOUNG: And then I can move on to
19 Mr. Mohan unless --

20 Do you have anything on Brin or Pichai?

21 MR. DEROSE: No.

22 MS. YOUNG: So I think I --

23 SPECIAL MASTER: So this is a witness
24 that's been deposed for 14 hours.

25 MS. YOUNG: Yes.

SPECIAL MASTER: Seven by you, seven by
the DOJ.

MS. YOUNG: Not in this case.

My understanding is that --

SPECIAL MASTER: In your presuit investigation.

MS. YOUNG: Yes, yes. And --

SPECIAL MASTER: I know it doesn't count as one, but yes.

MS. YOUNG: Yeah, yeah.

And, I think -- so the one point that wasn't raised is the volume of documents that was produced.

So the investigation deposition took place in 2020, so four years ago. Six million-ish, I don't know, around -- a lot of documents have been produced since then. And then even since the DOJ's deposition in October, documents have been produced associated with Mr. Mohan.

There was -- and I don't want to kind of get into a dispute about this, but even documents that were produced in early October, the States were not able to access until after his deposition.

And, as Mr. DeRose alluded to, I think, through those there's a lot of topics that were not

1 covered in the prior deposition that we didn't have
2 knowledge about or couldn't have asked about in the
3 prior deposition.

4 SPECIAL MASTER: So your ask on Mr. Mohan
5 is seven hours?

6 MR. DEROSE: Yes, sir.

7 MS. YOUNG: Uh-huh.

8 SPECIAL MASTER: Okay. All right.

9 What else? I don't mean to cut you off.
10 Just a question.

11 MS. YOUNG: I think that's it.

12 No, please go.

13 MR. DEROSE: I think the timing of what
14 happened when we were in the MDL is significant.

15 Mr. Lanier represented to Judge Jordan
16 before the decision to hold the Mohan deposition went to
17 the top levels, and that means Mr. Keller and
18 Mr. Lanier.

19 Mr. Mohan was scheduled for a deposition
20 the day after Labor Day. The week before, we got an
21 e-mail from our friends on the other side that there had
22 been a hiccup related to document production. That
23 hiccup resulted in 16 million documents not being
24 reviewed, 10,000 of which were related to Mr. Mohan. So
25 we pulled the deposition and said we can't do this at

1 this time.

2 It then took us a couple months to get all
3 the documents, once they were produced and ingested.
4 And we said we're not taking it just because the DOJ
5 takes it. We made it clear to Google at the time. And
6 they made it clear that they were going to object to it.

7 But we do think that he has unique
8 information. We think that we're no longer tied to the
9 DOJ schedule, and we weren't in October. And he was at
10 DoubleClick as part of the transaction. He has unique
11 information that we did not know during the
12 investigation.

13 And we do think, as they said, you know,
14 we weren't compelled to take it during the DOJ's time
15 line. And we didn't have time to review the documents.
16 We have now, and we're prepared to take it.

17 SPECIAL MASTER: All right.

18 Anything further from the States on these
19 three? Mr. Yetter, rebuttal?

20 MR. YETTER: Very briefly.

21 Counsel says, in an antitrust case, intent
22 to monopolize matters. There's nothing that says in an
23 antitrust case you always take the CEO or every other
24 top executive in the case of the adversary at the time.

25 And Sundar Pichai was not the CEO at the

1 time that DoubleClick was acquired.

2 So the intent to monopolize, the argument
3 is to take Mr. Pichai because somehow his intent was
4 critical in 2007. He wasn't the top executive.

5 SPECIAL MASTER: He wasn't the top, but he
6 had a significant role even at that point in time.

7 MR. YETTER: He did -- he wasn't an
8 executive, clearly.

9 SPECIAL MASTER: Right.

10 MR. YETTER: I think he --

11 SPECIAL MASTER: He was either an officer
12 or director. He probably wasn't a director. He was an
13 officer.

14 MR. YETTER: He was not a director.

15 SPECIAL MASTER: He was an officer.

16 MR. YETTER: He was an officer.

17 SPECIAL MASTER: Right.

18 MR. YETTER: But all of the documents that
19 the Special Master has seen, it's a group of officers
20 talking about the same thing.

21 And same with Mr. Brin. He -- it's
22 certainly a group of officers talking about the same
23 thing.

24 There wasn't anything in the papers in
25 which the States were saying that intent to monopolize

1 was the point of what they were trying to get.

2 And I would repeat, as I said earlier, the
3 DOJ is going to try this case in Virginia without either
4 of these men being deposed or without either of them
5 being witnesses in the case, Mr. Brin and Mr. Pichai.

6 The point that -- and the States made this
7 point in their papers, that most of these executives at
8 the time are gone.

9 The States are taking depositions of
10 former Google employees, a number of them. Many of them
11 have their own lawyers. And so that's something that
12 certainly can happen here.

13 SPECIAL MASTER: Those are the third-party
14 witnesses that you were talking about recently?

15 MR. YETTER: It is, some of which we are
16 not coordinating, but we -- the request came to us and
17 we've notified them.

18 So the bottom line is I would simply end
19 with the Microsoft case, Computer Acceleration. In that
20 case -- and every other case is consistent, as both
21 sides have cited. The oral deposition of a high-level
22 corporate executive should not be freely granted when
23 the subject of the deposition will be only remotely
24 relevant to the issues of the case. This is especially
25 so where the information sought in the deposition can be

1 obtained through less-intrusive discovery methods or
2 from depositions that will arguably lead to more direct
3 knowledge of the facts at issue.

4 And we respectfully submit everything we
5 presented and, frankly, everything that the States have
6 presented show that there are other -- many other
7 employees that can testify about the same topics. And
8 none of these, and certainly Mr. Brin and Mr. Pichai,
9 have knowledge -- personal knowledge that's unique.
10 And, at best, some of the things that are being asked
11 about are remotely relevant.

12 (Reporter clarification.)

13 (Security Guard entered proceedings.)

14 SPECIAL MASTER: We're going to take a
15 short break.

16 (Discussion held off the record.)

17 SPECIAL MASTER: We're back on.

18 Anything further from the States in
19 response to that? I assume not. But...

20 MR. DEROSE: No, sir.

21 SPECIAL MASTER: Okay.

22 Mr. Keller, do you need to leave? I think
23 we're done on this issue.

24 MR. KELLER: I appreciate it.

25 SPECIAL MASTER: You bet.

1 MR. KELLER: Thank you, Special Master.

2 Good to see you-all.

3 SPECIAL MASTER: Thank you.

4 Let's move on. We have a few more issues.

5 We've handled the two protective orders from Google.

6 Interrogatories, are we -- y'all have an
7 understanding on Interrogatory No. 12? No, we don't.

8 MR. YETTER: We do not.

9 SPECIAL MASTER: Let's be heard.

10 MR. YETTER: And it is -- it's a simple
11 issue. We've asked -- they've alleged that
12 the -- certain Google contracts are -- they allege tying
13 claims in certain of the contracts. We've asked them to
14 identify the contracts, which largely they have, but
15 also what specific provisions are --

16 SPECIAL MASTER: Coercive in nature.

17 MR. YETTER: -- coercive or related to the
18 tying. And that's what we haven't gotten.

19 And it's -- it is -- we're almost done
20 with fact discovery. It's time -- beyond time to give
21 us that information.

22 SPECIAL MASTER: Okay.

23 Mr. DeRose or --

24 MS. YOUNG: Yeah, I think the papers
25 are --

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

THE STATE OF TEXAS,)
ET AL.,)
)
Plaintiffs,) CIVIL ACTION NO.:
)
VS.) 4:20-CV-957-SDJ
)
GOOGLE LLC,)
)
Defendant.)

REPORTER'S CERTIFICATION

HEARING BEFORE SPECIAL MASTER

APRIL 18, 2024

I, Kimberly Byrns Buchanan, Certified Shorthand Reporter in and for the State of Texas, hereby certify to the following:

That the foregoing contains a true and accurate transcription of all proceedings in the above-styled matter as reported by me;

I further certify that I am neither counsel for, related to, nor employed by any of the parties or attorneys in the action in which this proceeding was taken, and further state that I am not financially or otherwise interested in the outcome thereof.

Certified to by me this 22nd day of April, 2024.

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Page 163